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March 22, 1999

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OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.E.
Washington, D.C. 20554

Re: **Ex Parte Presentation:**
CC Docket No. ~~00-04~~ 00-4
Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas.

Dear Ms. Salas:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's rules, you are hereby notified on behalf of NEXTLINK Communications, Inc. that R. Gerard Salemme, Senior Vice President of NEXTLINK Communications, Inc., and the undersigned met with Commissioner Michael Powell, Commissioner Harold Furchtgott-Roth, Kyle Dixon, Legal Advisor to Commissioner Powell, and Helgi Walker, Legal Advisor to Commissioner Furchtgott-Roth.

NEXTLINK representatives met with Commissioner Powell, Mr. Dixon and Mr. Jackson on Tuesday, March 21st to discuss issues relating to the pending application by SBC Communications Inc. for authorization to provide in-region, interLATA services in Texas. At this meeting, NEXTLINK summarized and clarified its policy position as previously submitted into the record. In addition, NEXTLINK addressed recent post 271 entry actions by Bell Atlantic in the State of New York.

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Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel Gonzalez
Director, Regulatory Affairs

cc: Kyle Dixon, Legal Advisor, Office of Commissioner Powell
Helgi Walker, Legal Advisor, Office of Commissioner Furchtgott-Roth

SWBT 271 Application for Texas

NEXTLINK Communications, Inc.

March 21, 2000

FCC Meetings

271 Process

- NEXTLINK supported FCC decision to grant Bell Atlantic 271authority in N.Y.

- The Commission order granting Bell Atlantic-NY's Application established the right benchmark by which all future applications should be judged.

The Bell Atlantic 271 Standard

- FCC focused on the following critical elements necessary to ensure local competition:
  - full and open participation by all interested parties;
  - extensive independent 3rd Party testing of OSS offerings;
  - development of clearly defined performance measures and standards;
  - adoption of performance assurance measure that create a strong financial incentive for post-entry compliance with the section 271 checklist.

The Bell Atlantic Post Merger and Post 271 Experience

- The 271 process is even more crucial in light of Bell Atlantic's actions since receiving approval of its merger with NYNEX and 271 authority.
  - Bell Atlantic-N.Y. "Module 3" proceeding
    - first set of UNE prices filed since 271 authorization
    - BA proposal for an "across the board" increase to existing UNE TELRIC rates is in sharp contrast to the general downward trend in costs resulting from the wider deployment of advanced network technologies.
  - Contrary to BA's claims regarding the benefits associated with its merger with NYNEX, Bell's own performance monitoring data reveals 28 months of worsening service degradation to facilities-based CLECs throughout the BA 14 state region.
  - Recent FCC settlement order identifying Bell Atlantic OSS backsliding in New York.

SBC-Texas is not Bell Atlantic-NY

- The Telcordia third party OSS test was a limited test that is not as broad, independent and robust as the NY test.
  - Telcordia failed to identify major problems or conduct root cause analysis.
  - failed to test the wholesale support processes for CLECs besides AT&T and MCI - - focused on SBC's computer systems and failed to test SBC's wholesale support systems generally
    - did not study typical CLEC orders - - "complex orders"- - (e.g., DID, DS-1);
    - only a subset of measures were reviewed;
  - Telcordia test not independent (I.e., Telecordia software used by SBC caused RPON problem; RPON problem not fixed by test)
  - Telcordia test was not as open as the NY test re: CLEC participation

NEXTLINK's Texas Experience

- NEXTLINK's experience with SWBT in the Texas local telecom market confirms DOJ's findings.
  - SWBT's reliance on manual processes for OSS impedes local competition in Texas:
    - manual processing causes delays and service outages that are not transparent to NEXTLINK's end-user customers and NEXTLINK is held accountable in the marketplace for these deficiencies;
    - SWBT's own data admits that over 50% of UNE-loop orders fall out for manual processing;
  - NEXTLINK's ability to successfully perform hot cuts is greatly impeded by SWBT's inability to provide operational facilities.
  - NEXTLINK's own performance data calls into question the accuracy of SWBT performance data supporting its 271 application.

EXETER
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REF: 4147

March 9, 2000

Memorandum

To: Catherine Massey
Robert McCausland
Prince Jenkins

From: Marvin Kahn

Subject: BANY Case No. 98-C-1357 "Module 3"

This is in response to your request for a summary of the BANY filing. In this, we several of the major characteristics of the BANY filing from a top-down perspective. If you have any questions, or need additional information, please feel free to contact me directly.

In February, BANY filed its first set of UNE prices since the FCC granted it Section 271 approval to enter the in-region toll markets. The underlying requirement for this approval, pursuant to the Telecom Act, is the permanent removal of barriers to entry into the market for local telecommunications services. A review of this filing underscores the importance of not equating the removal of barriers to entry with the existence of market competition. Specifically, that BANY retains significant market power is evidenced by its intention to set and keep prices for UNEs above competitive market levels.

The PSC established this proceeding to undertake a broad inquiry into the reasonableness of existing rates and charges for UNEs. Rates currently in place resulted from a series of orders beginning with the April 1997 Opinion No. 97-2 (Phase 1). The Commission initiated this inquiry to identify and capture changes that would affect the level of costs incurred and correspondingly the level of cost-based rates. A revisiting of a number of UNE rates was made necessary by the FCC UNE Remand Order. In the June 10, 1999 Ruling on Scope and Schedule, Judge Linsider noted that when considering updates to cost estimates and to cost-based rates, it is necessary to recognize the more widespread deployment of advanced technologies (e.g., GR-303 and DSL)[1] and also changes in cost levels.

[1] Ruling, page 13.

Our review of the BANY filing suggests that the cost estimates and rates proposed do not result from an exercise that can be described as an update, as ordered by the Judge. Instead, it appears that BANY used data and/or methods that were different than those ordered by the PSC. As explained immediately below, the impact of wider deployment of advanced network technologies and the changes experienced in underlying costs all point to a downward trend in cost estimates and in competitively determined cost based rates. The proposals offered here do not conform with this expectation.

Cost of capital is a case in point. Telephony is a capital intensive business, underscoring the importance of capital costs. In Opinion 97-2 the Commission established a 10.2 percent overall cost of capital for use in calculating UNE costs and setting UNE rates.[2] Financial market data suggest that capital costs are lower today than they were in 1996 and at about the same level as they were in 1997.[3] For instance, the FCC recently published a measure of RBOC cost of capital using a capital asset pricing model (CAPM). The FCC relied upon the Moody's Baa index for corporate bonds as a benchmark, and marked up equity costs over that to reflect a "risk premium". Changes in the benchmark cost of debt would be translated into changes in the cost of equity, and correspondingly into the RBOC overall cost of capital.[4] Moody reports its bond index stood at 8.05, 7.86, 7.22, and 7.87 in 1996, 1997, 1998 and 1999, respectively.[5] While the overall cost of capital to BANY is no higher today than it was at the time of Order 97-2, BANY is now proposing a cost of capital of 12.6 percent, almost 25 percent higher.

The BANY treatment of expenses is quite similar. Deployment of new technology should reduce maintenance and support costs. New technology takes advantage of the greater use of replaceable components, meaning that maintenance increasingly involves replacement rather than repair. Lower maintenance expenses should result. Computerized processes should improve the efficiency of back-office functions, reducing various support and overhead requirements. U.S. Bureau of Labor Statistics (BLS) data and FCC studies provide supporting evidence. Operating expenses tend to be labor intensive. The BLS reports that for the three years ending 1998, the most recent data available, labor productivity gains in the telecommunications industry outpaced the gains realized in the economy as a whole by 2.5 percentage points.[6] The FCC examined total factor productivity gains, a measure that aggregates gains from utilization of labor, capital and materials, and reported that in recent years total factor productivity gains realized by the RBOCs outpaced those realized by the U.S. economy as a whole by better than 4.2 percentage points.[7] Considering gains in productivity as well as capital, labor and materials costs, the FCC concluded that the trend in underlying costs experienced by the RBOCs was

[2] Ruling, page 40.
[3] The PSC Order was issued in April 1997, suggesting that it relied principally on 1996 financial cost information.
[4] CC Docket No. 94-1, et al., Price Cap Performance Review, Further Notice of Proposed Rulemaking, November 15, 1999, Table B-8.
[5] Mergent Bond Record, February 2000, p. 31.
[6] 4.1 percent for telecom and 1.6 percent for the non-form business sector.
[7] Price Cap Performance Review, Op. Cit., Table B-12.

expected to be 6 to 6.5 percentage points less than that experienced by the economy as a whole.[8] Recently, cost increases in the general economy (i.e., the rate of inflation) has been averaging averaging 2 percent per year, which means that BANY's costs should have trended downward over the 1997-1999 period by at least 4 percent per year.

This downward trend in expenses is not found in the BANY filing. Consider the maintenance expense factors for four important plant accounts: buried fiber, buried copper, digital switching and digital circuit. Buried fiber is one of the fastest growing accounts, but is the smallest of these accounts. The maintenance expense factors established by the PSC in Opinion 97-2 and those proposed here by BANY for these accounts are as follows: underground fiber, .0277 and .0198; underground copper, .0535 and .1106; digital switching, .0715 and .1037; digital circuit, .0515 and .0722. While the expense factor associated with fiber facilities fell by approximately 30 percent, those for the others increased by between 30 and 50 percent. A comparison of the overall cost factors proposed by BANY for these same plant accounts is as follows: underground fiber, .2017 and .2795; underground copper, .2436 and .3763; digital switching, .2319 and .3580; digital circuit, .2484 and .3345. Considering all cost components, the overall expense associated with each of these plant accounts has increased between 35 and 55 percent, despite the fact that telecommunications industry costs continue to decline with time..

The cost changes found translate directly into changes in proposed prices. In general, proposed rates are higher than those currently in place, though there are instances where reductions have been proposed. Attached is a comparison of rates currently in place to those proposed by BANY. The comparison covers 2- and 4-wire loops, ports, interoffice facilities and line conditioning charges. BANY is proposing to deaverage loop UNEs by geographic area as well as by DLC technology. As shown in the attached, rates in all geographic areas and for both DLC technologies are higher than those currently in place, and on a statewide average by about 35 percent. Rates for 4-wire loops are also proposed to increase, but not by as much. Ports are less important to the CLEC Coalition, and have been found by the FCC to be quasi-competitive in some instances. This, however, does not apply to tandem ports, and BANY is proposing to increase these rates by approximately two-thirds. Proposals for interoffice transport rates are mixed, proposed rates for OC 48 are down, but those for OC 3 are up. In addition, for DS1, as an example, the fixed termination charge is down, whereas the mileage rate is up. The net financial effect in this case, will be determined by the length of the transport element. BANY is proposing to substantially increase all charges associated with line conditioning.

We trust that this analysis will be helpful. If you have any questions, please call me directly.

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[8] Id.

BANY Rate Proposal: Loop UNEs

	PROPOSED			CURRENT	% CHANGE
	Loop UNE	F-Subloop	D-Subloop	Loop UNE	
2 wire analog loop UNE					
		IDLC			
1A	12.57	14.70	6.84	12.49	0.64%
1B	15.97	12.63	12.30	12.49	27.86%
2	24.19	16.20	16.93	19.24	25.73%
Average	17.25	14.03	12.17	14.21	21.41%
		UDLC			
1A	17.12	19.27	6.84	12.49	37.07%
1B	19.86	16.52	12.30	12.49	59.01%
2	28.47	20.49	16.93	19.24	47.97%
Average	21.40	18.19	12.17	14.21	50.59%
4 wire analog loop UNE					
		IDLC			
1A	30.72	31.68	8.00	38.07	-19.31%
1B	35.00	26.35	17.62	38.07	-8.06%
2	50.56	33.44	26.08	50.48	0.16%
Average	37.94	29.43	17.48	41.23	-7.98%
		UDLC			
1A	43.27	44.24	8.00	38.07	13.66%
1B	45.14	36.51	17.62	38.07	18.57%
2	61.12	44.03	26.08	50.48	21.08%
Average	48.76	40.27	17.48	41.23	18.27%
4 wire digital loop UNE					
1A	151.32	145.73	14.61	98.32	53.91%
1B	130.88	115.59	24.31	98.32	33.12%
2	199.27	175.92	32.34	112.29	77.46%
Average	153.18	138.15	24.04	101.88	50.36%

BANY Rate Proposal: Ports

	Proposed				Current	% Change
Ports	Zone 1A	Zone 1B	Zone 2	Statewide	Statewide	Statewide
Analog line	3.45	3.36	3.49	3.41	2.50	36.58%
Digital Line	1.67	1.73	2.19	1.83	2.50	-26.69%
Digital Trunk	162.67	174.89	164.48	169.32	6.75 per DS0	-3.52%
BRI	16.46	17.95	17.80	17.56	11.77	49.16%
Tandem				231.67	5.28 per DS0	68.76%

BANY Rate Proposal: Interoffice Transport

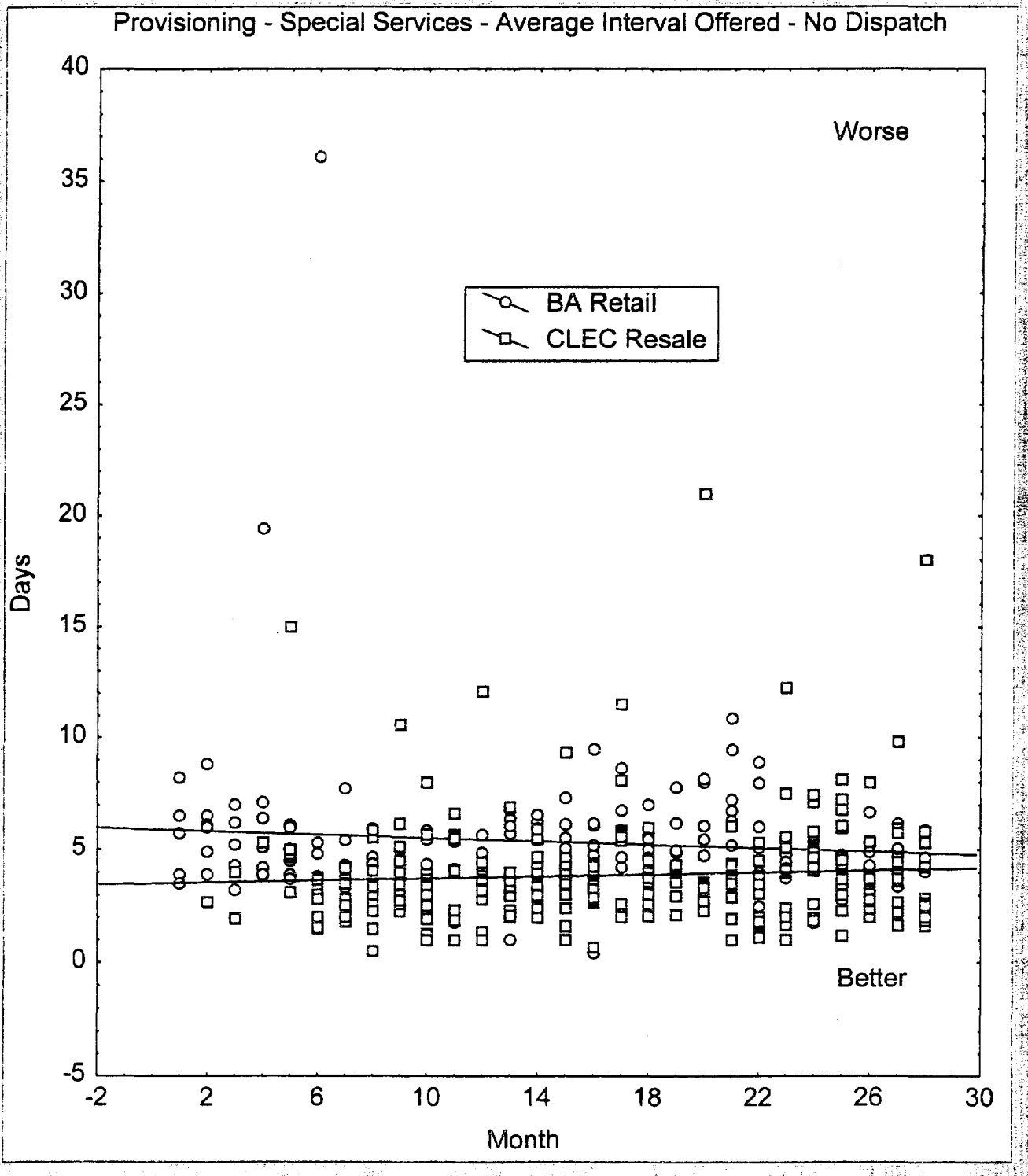
	Proposed		Current		% Change	
	Fixed	Mileage	Fixed	Mileage	Fixed	Mileage
DS1	69.21	2.6	110	0.72	-37.08%	261.11%
DS3	899.38	19.35	911	20.1	-1.28%	-3.73%
OC3	2846.55	62.5	1365	60.31	108.54%	3.63%
OC12	4216.35	114.89	4145	241.21	1.72%	-52.37%
OC48	4565.96	14.31	9768	375.81	-53.26%	-96.19%
3/1 Mux	567.18		223.52		153.75%	

BANY Rate Proposal: Line Conditioning

	Proposed		Current	% Change	
	Regular	Expedited		Regular	Expe
Engineering Work Order	881.73	1,243.70	24.30	3628.52%	5118
Load Coil Removal (18-21kft)	1,048.35	1,467.69	318.71	328.94%	460
Load Coil Removal (21-27kft)	1,393.77	1,951.28	423.00	329.50%	461
Bridge Tap Removal-Single	357.13	499.98	103.46	345.19%	483
Bridge Tap Removal-Multiple (per link)	875.08	1,225.12	249.91	350.16%	490

Bell Atlantic Performance Monitoring Reports

28 months (9/97 through 12/99) for 14 states



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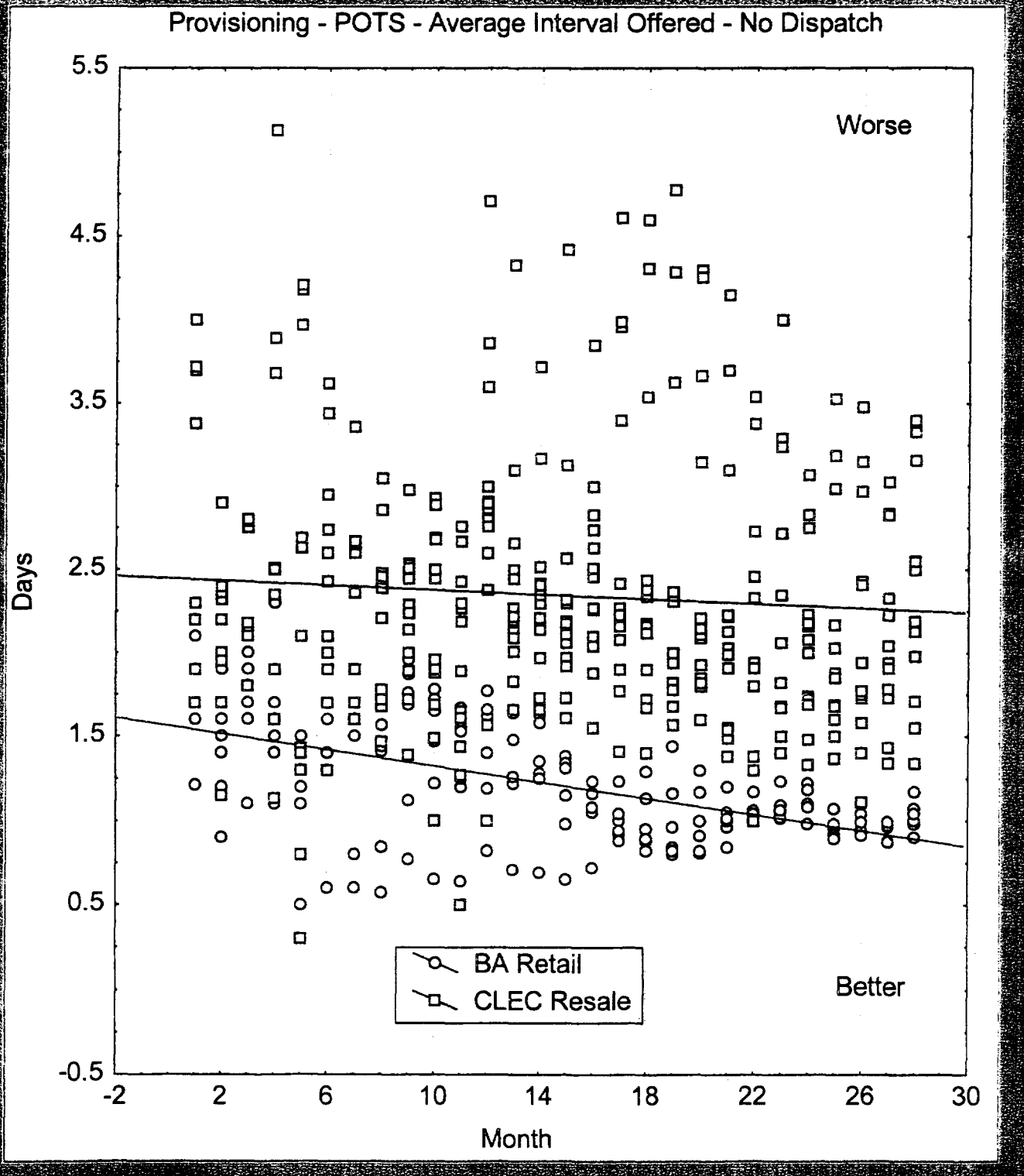

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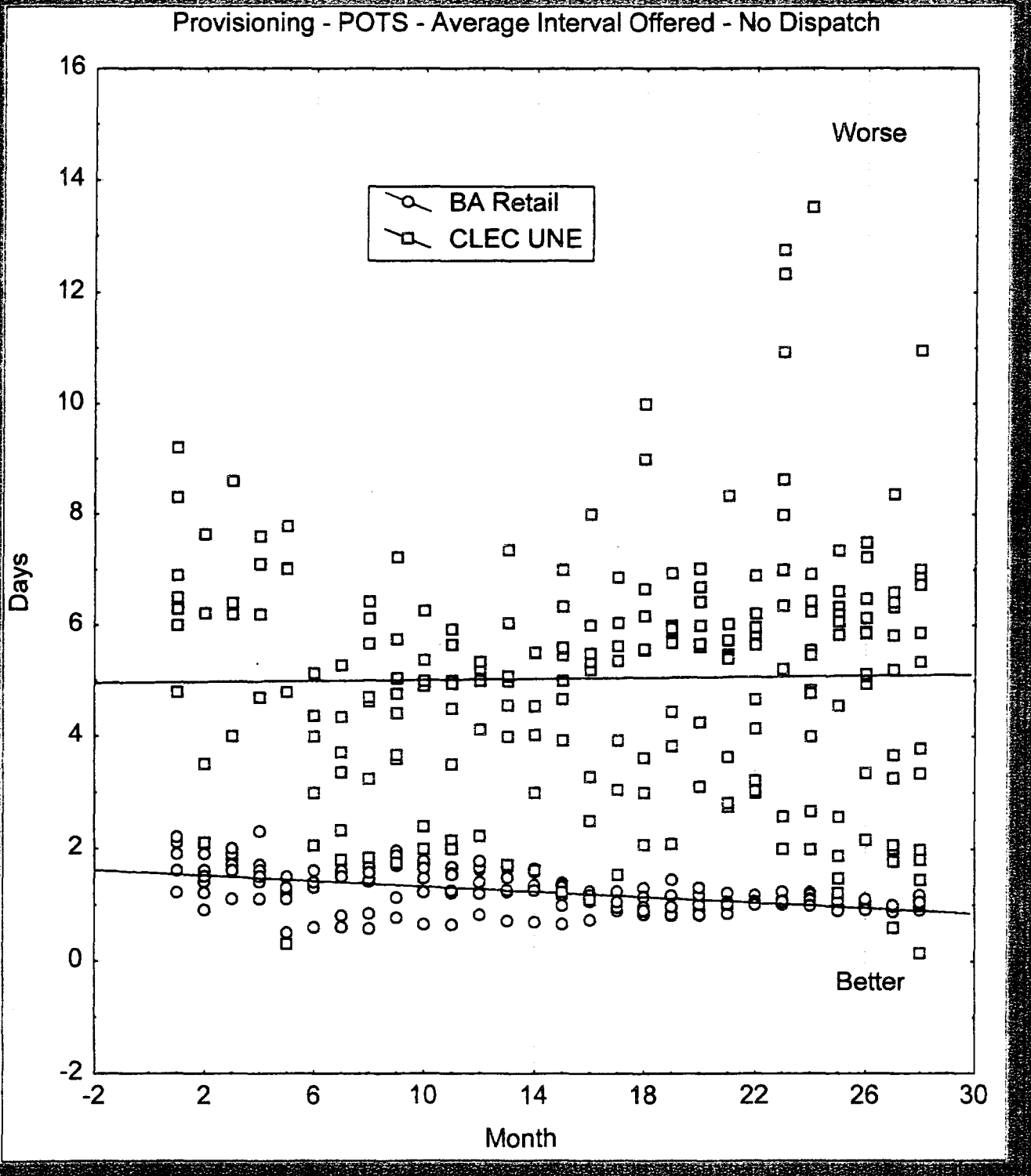

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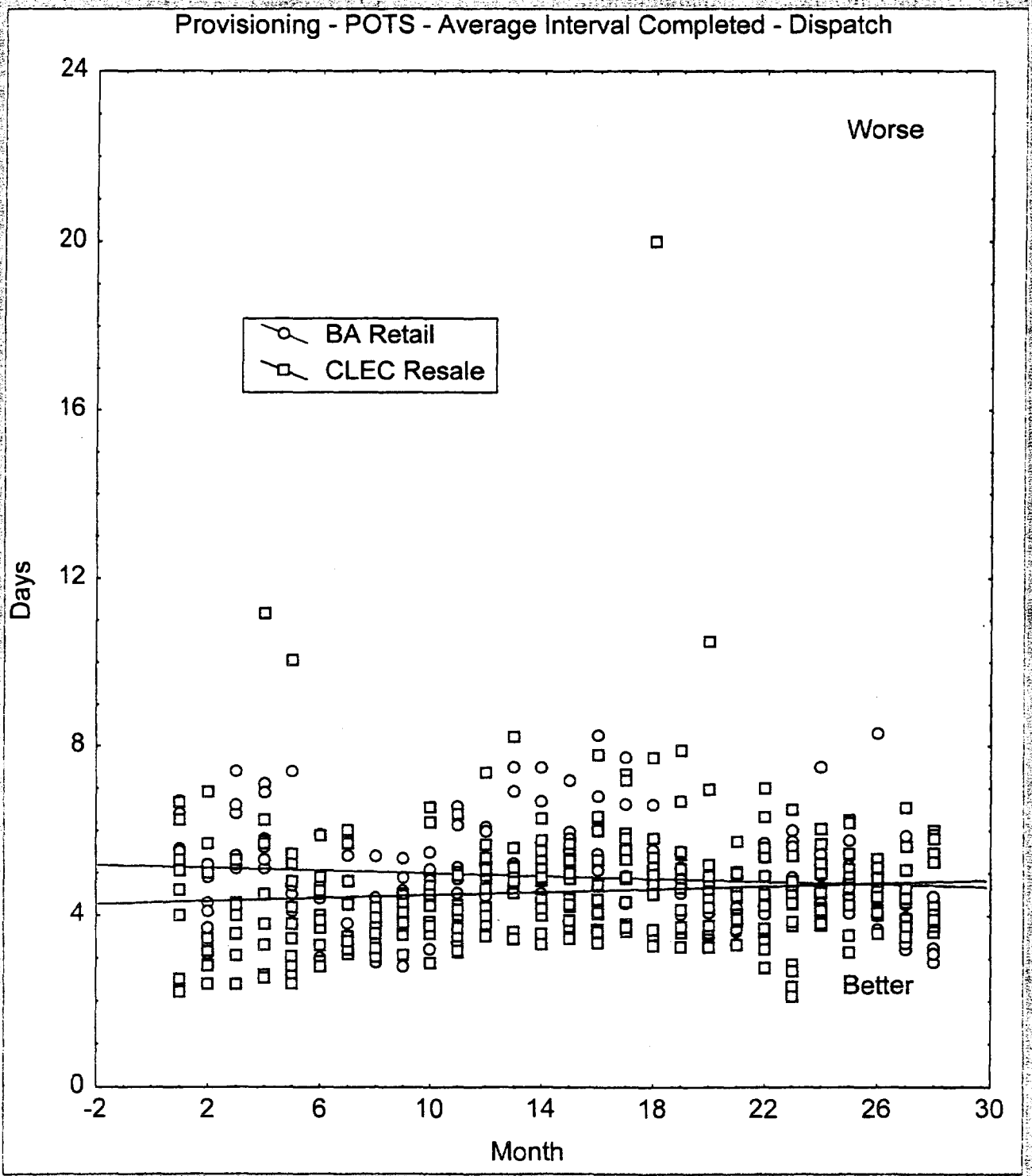

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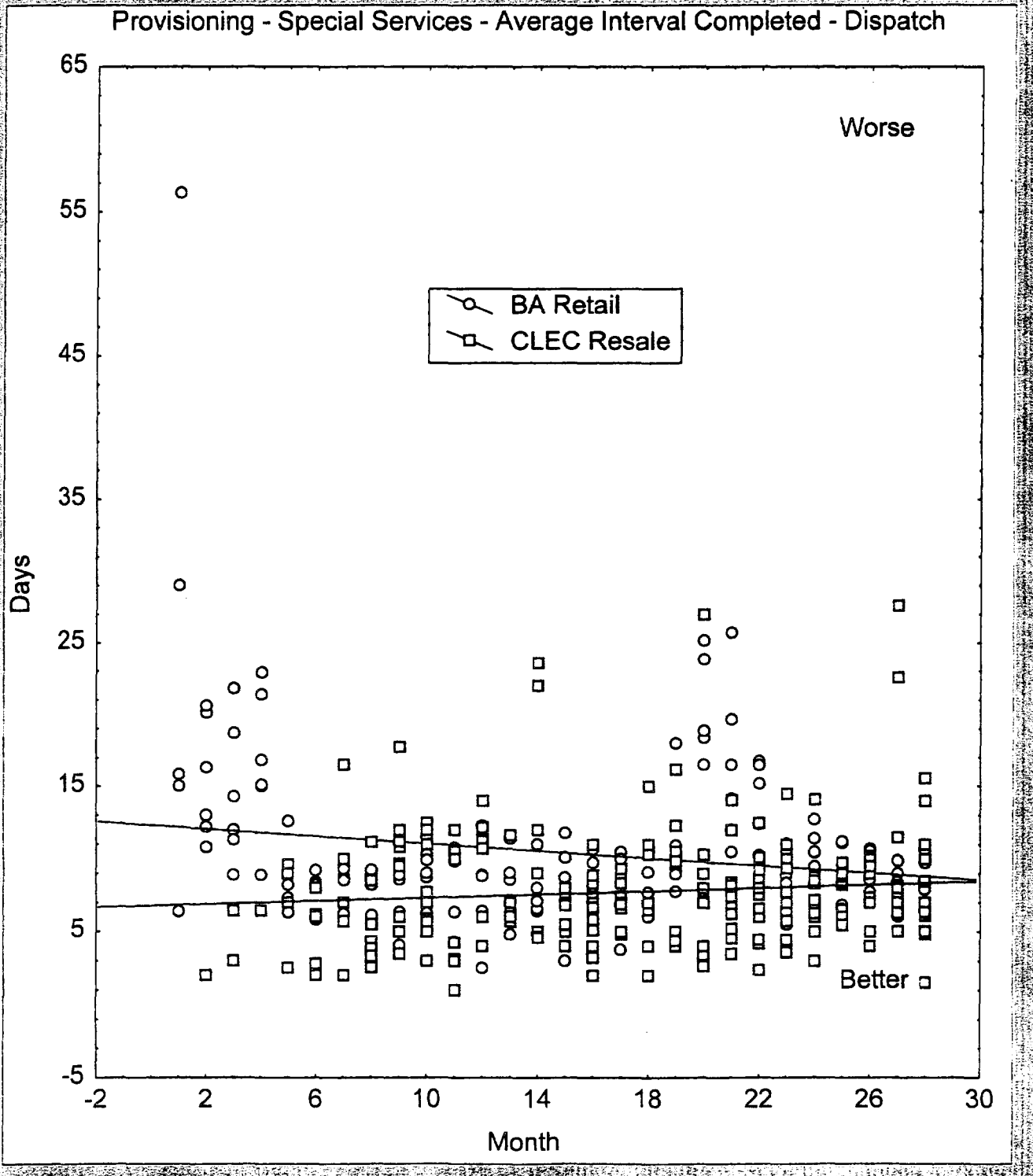

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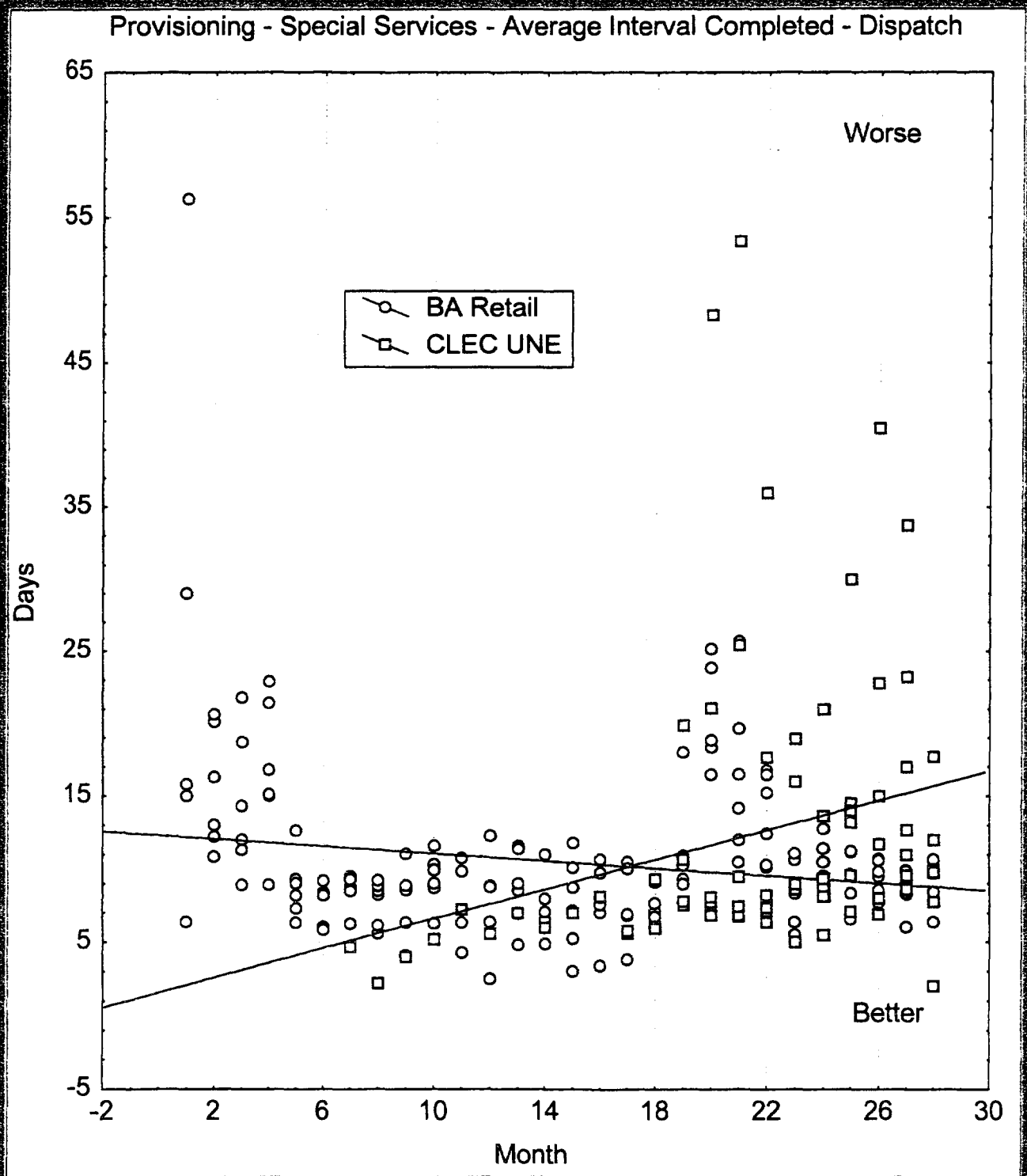

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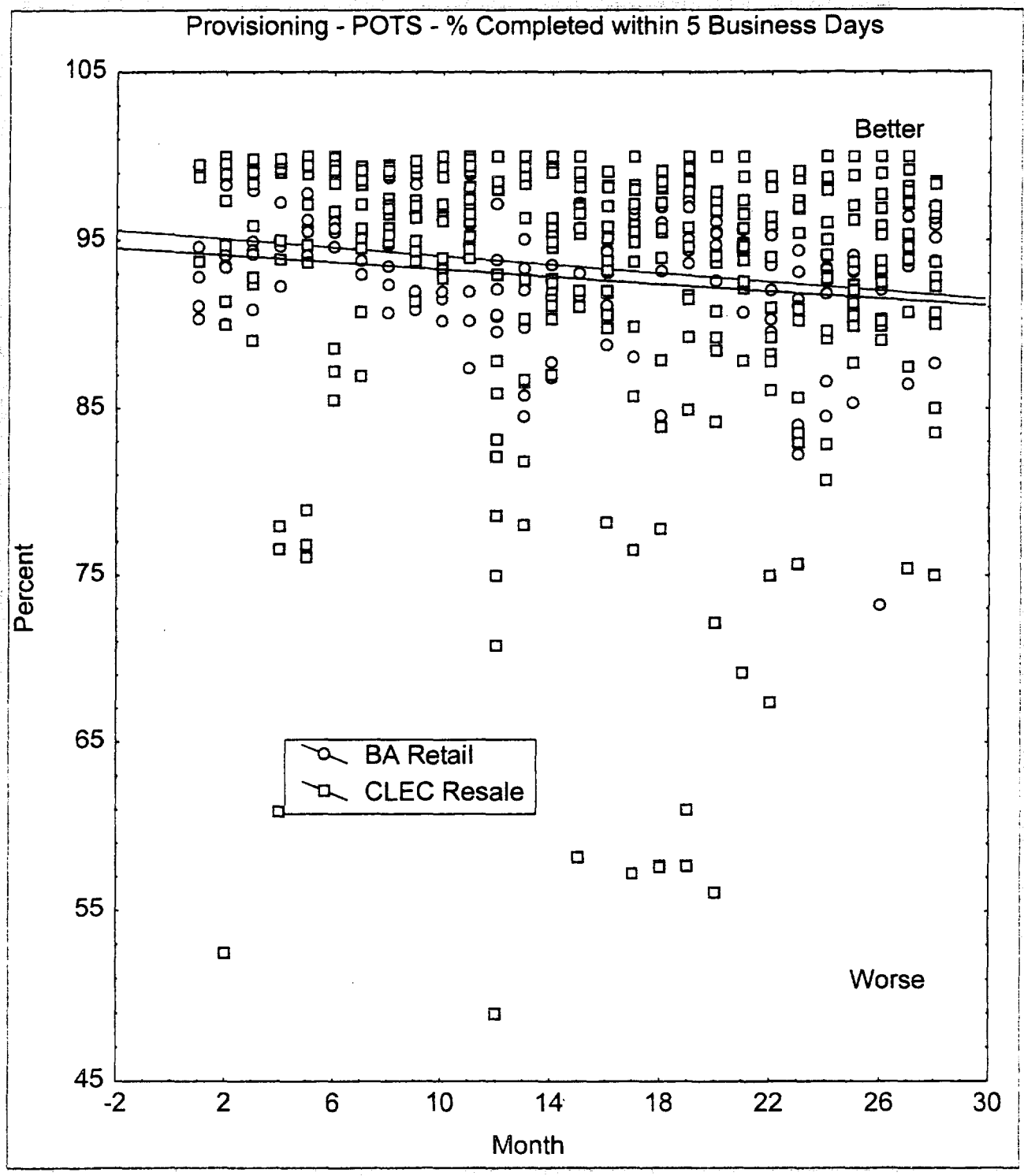

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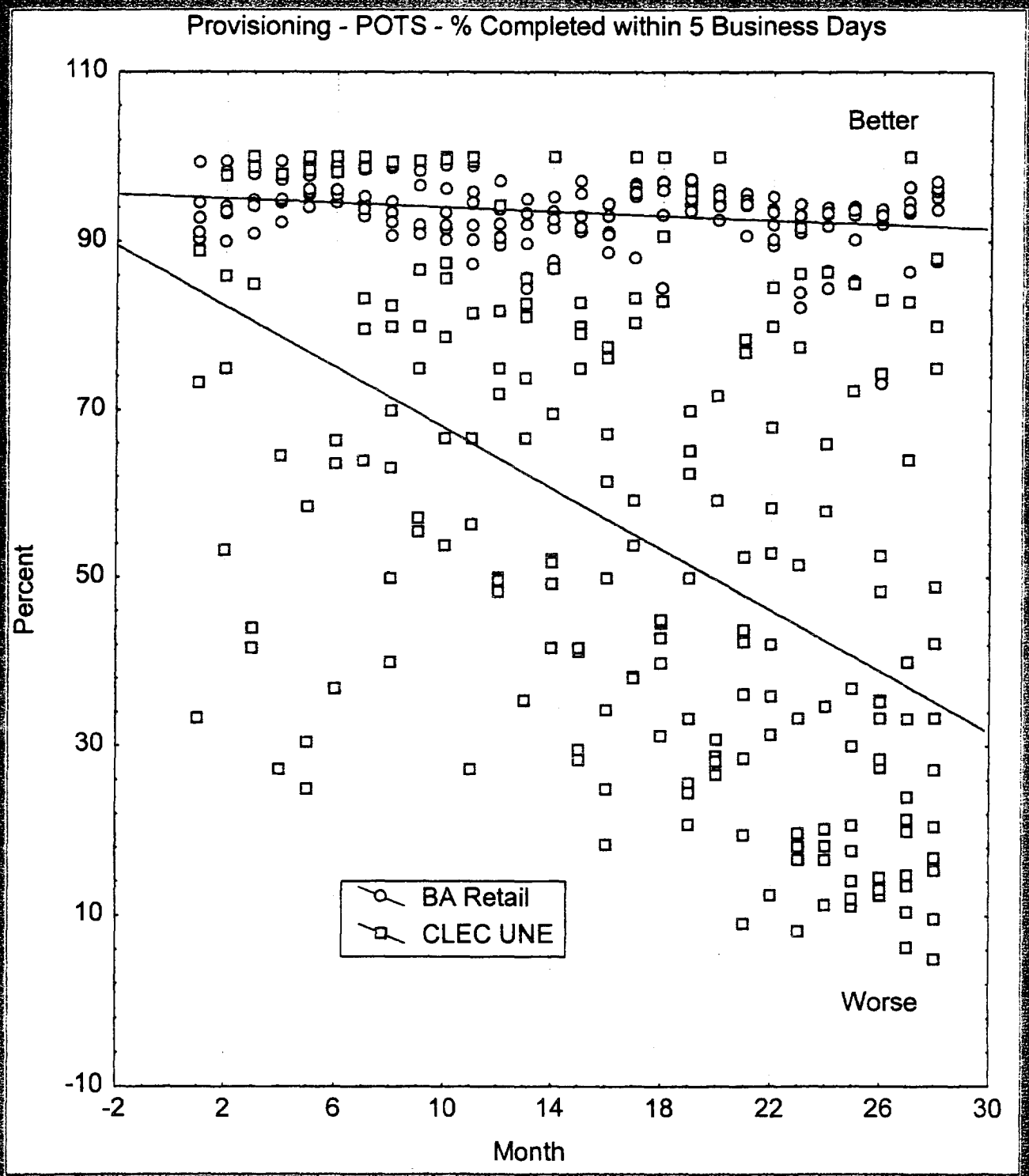

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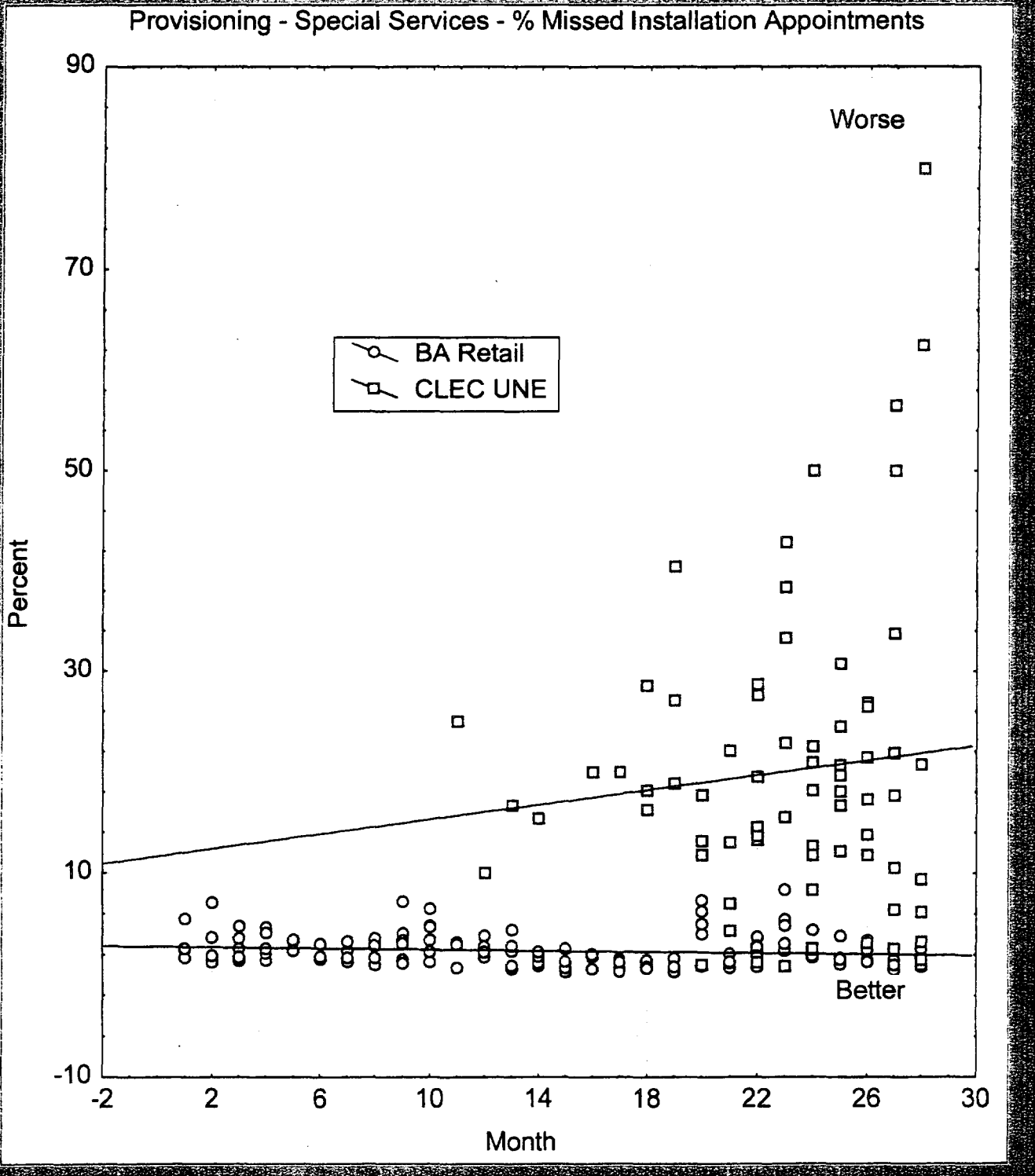

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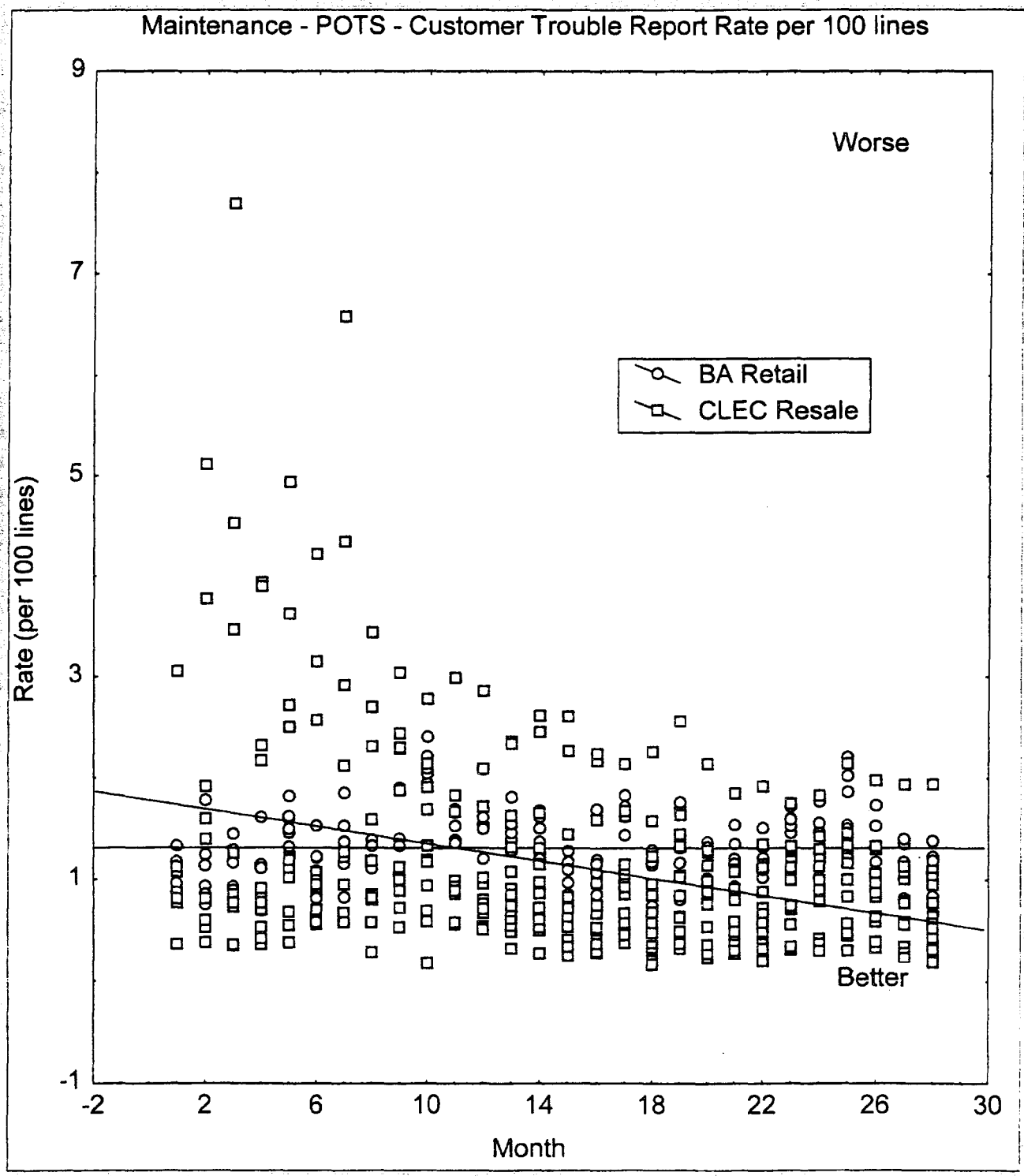

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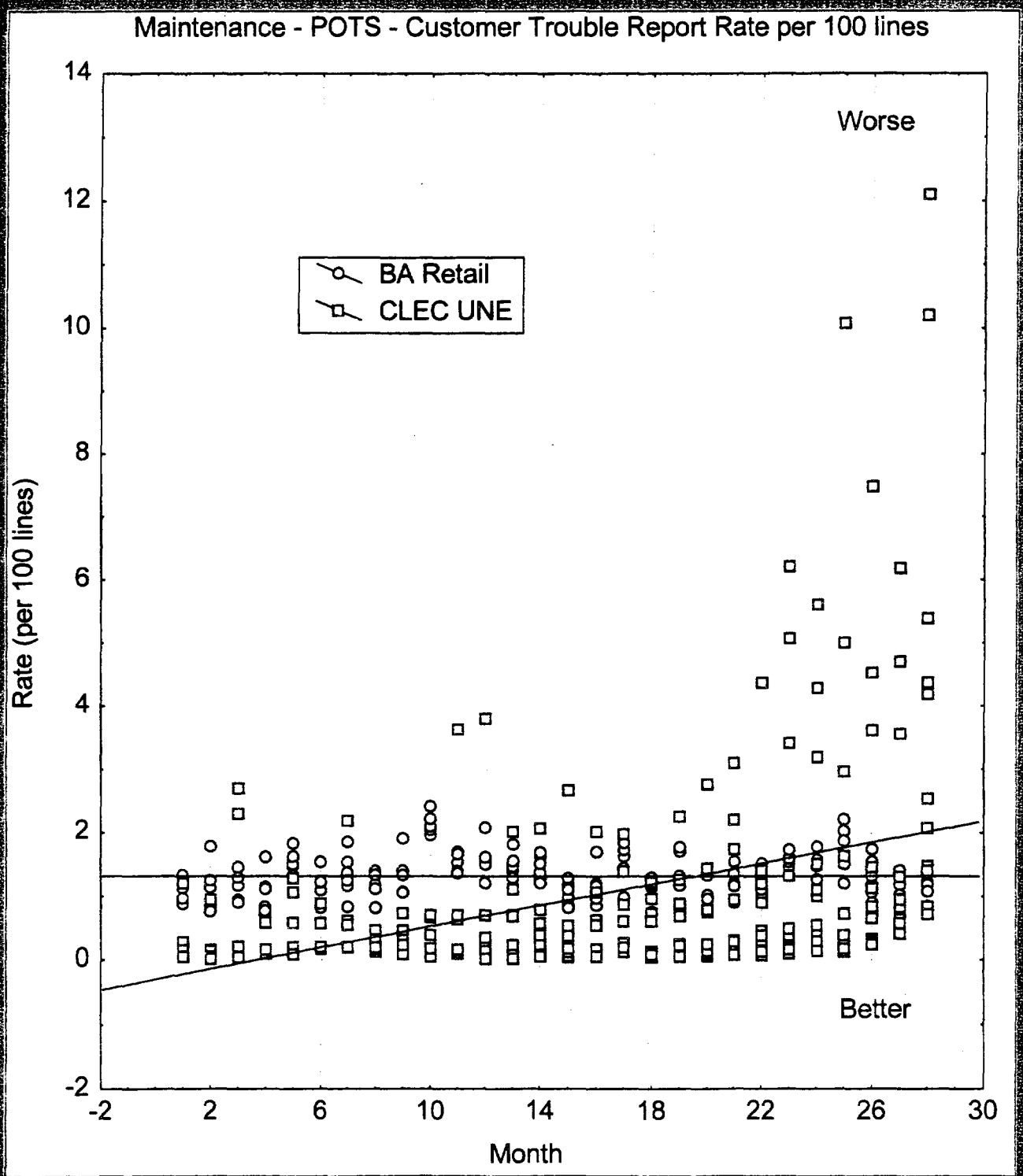

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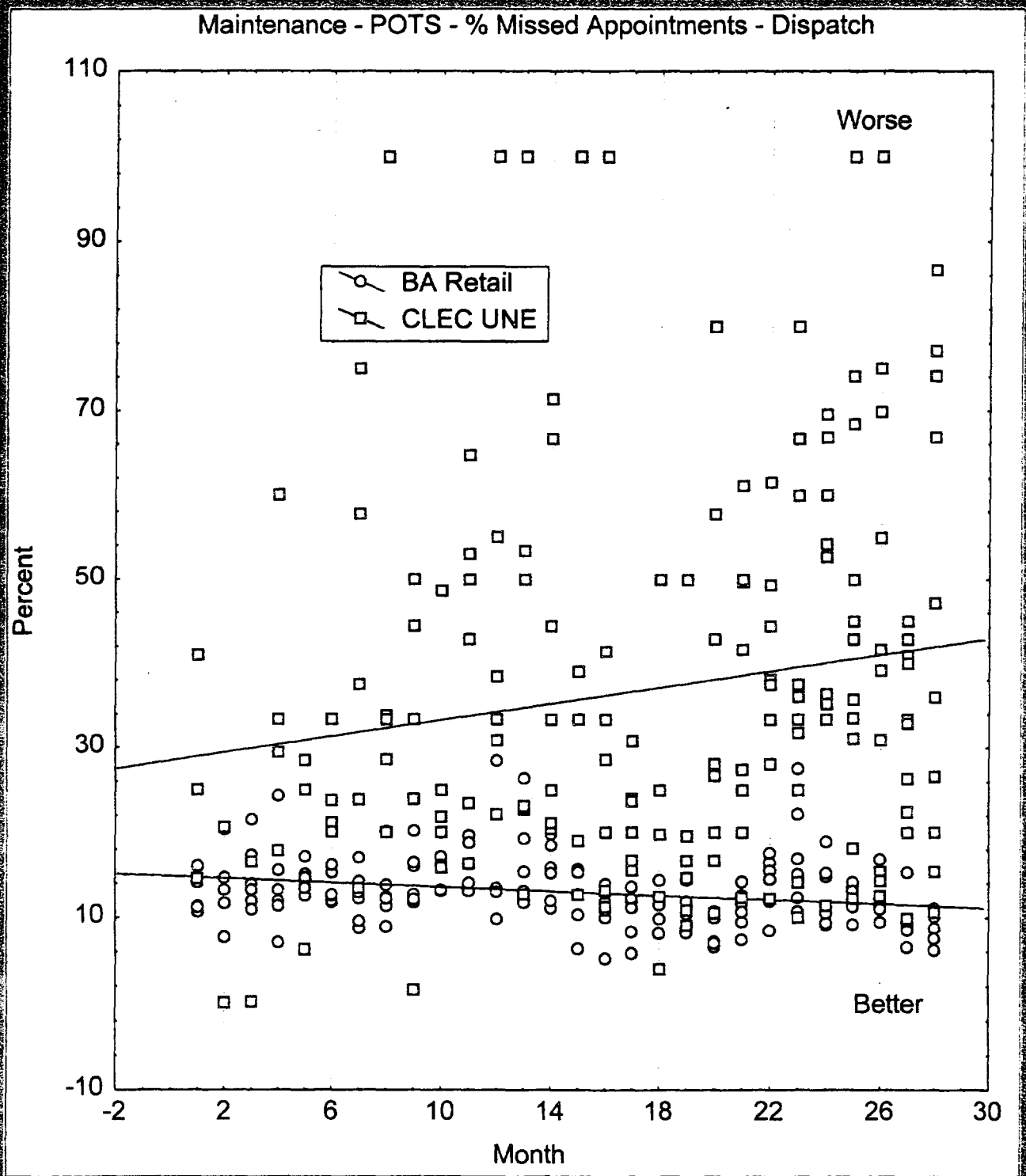

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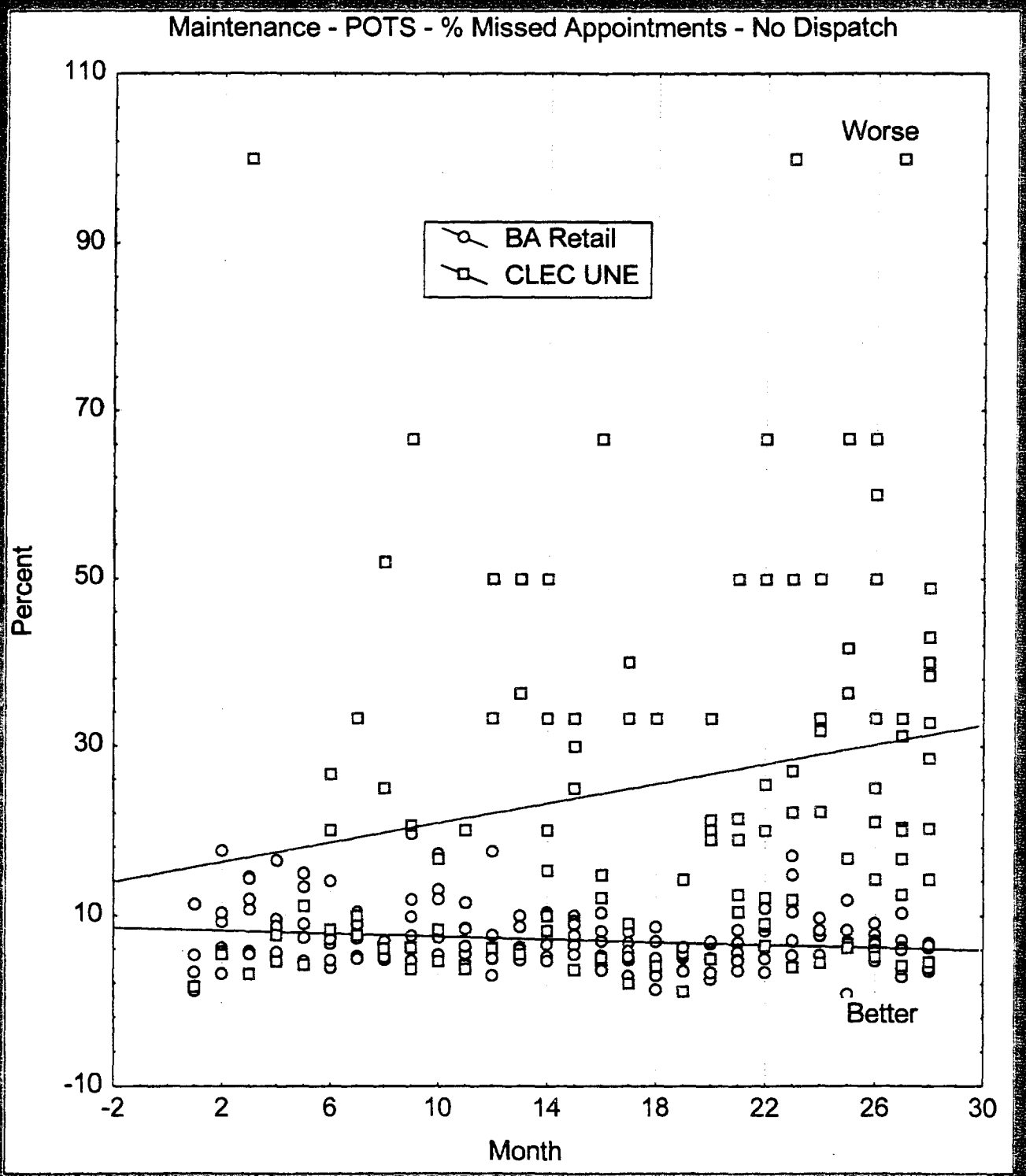

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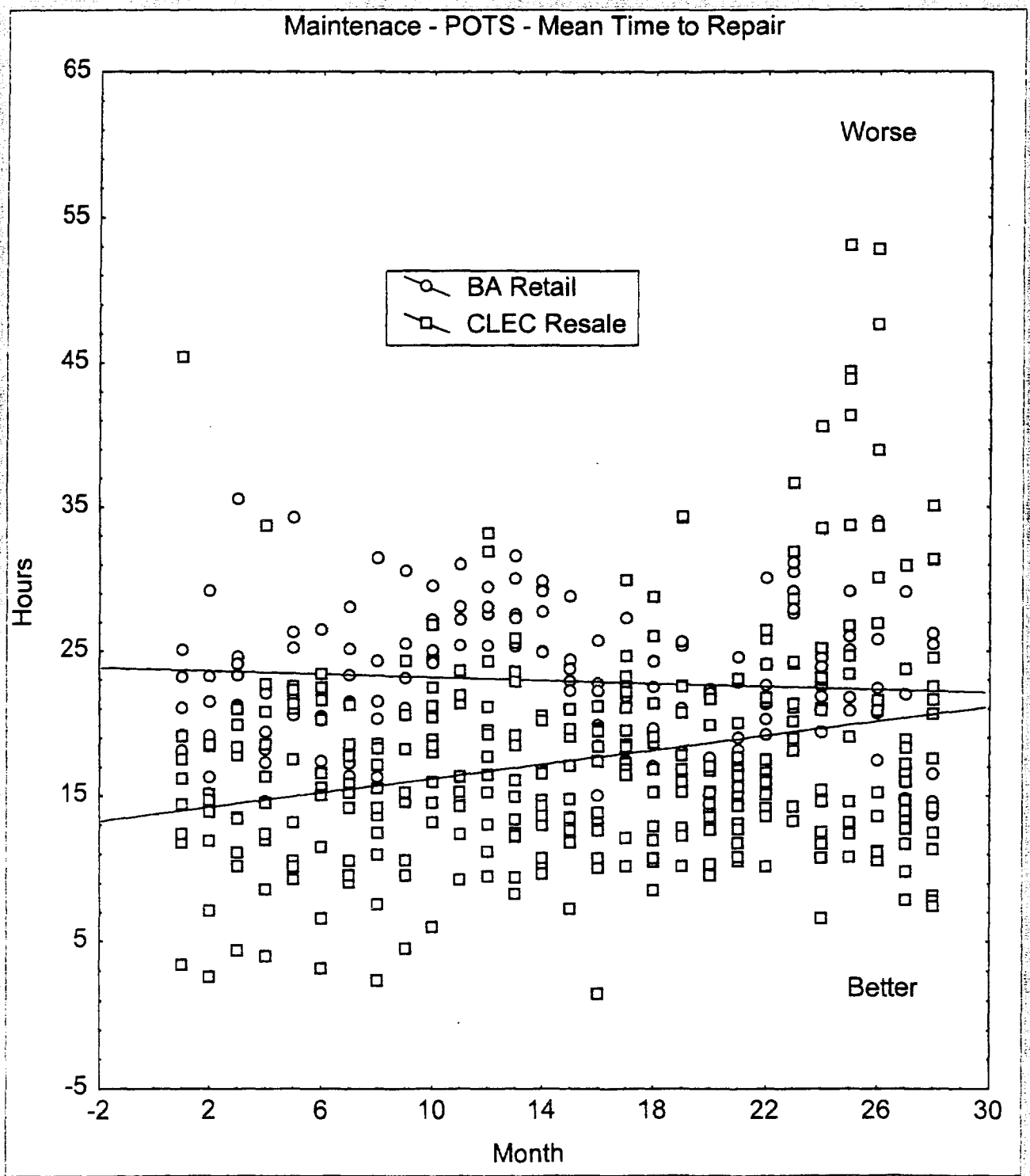

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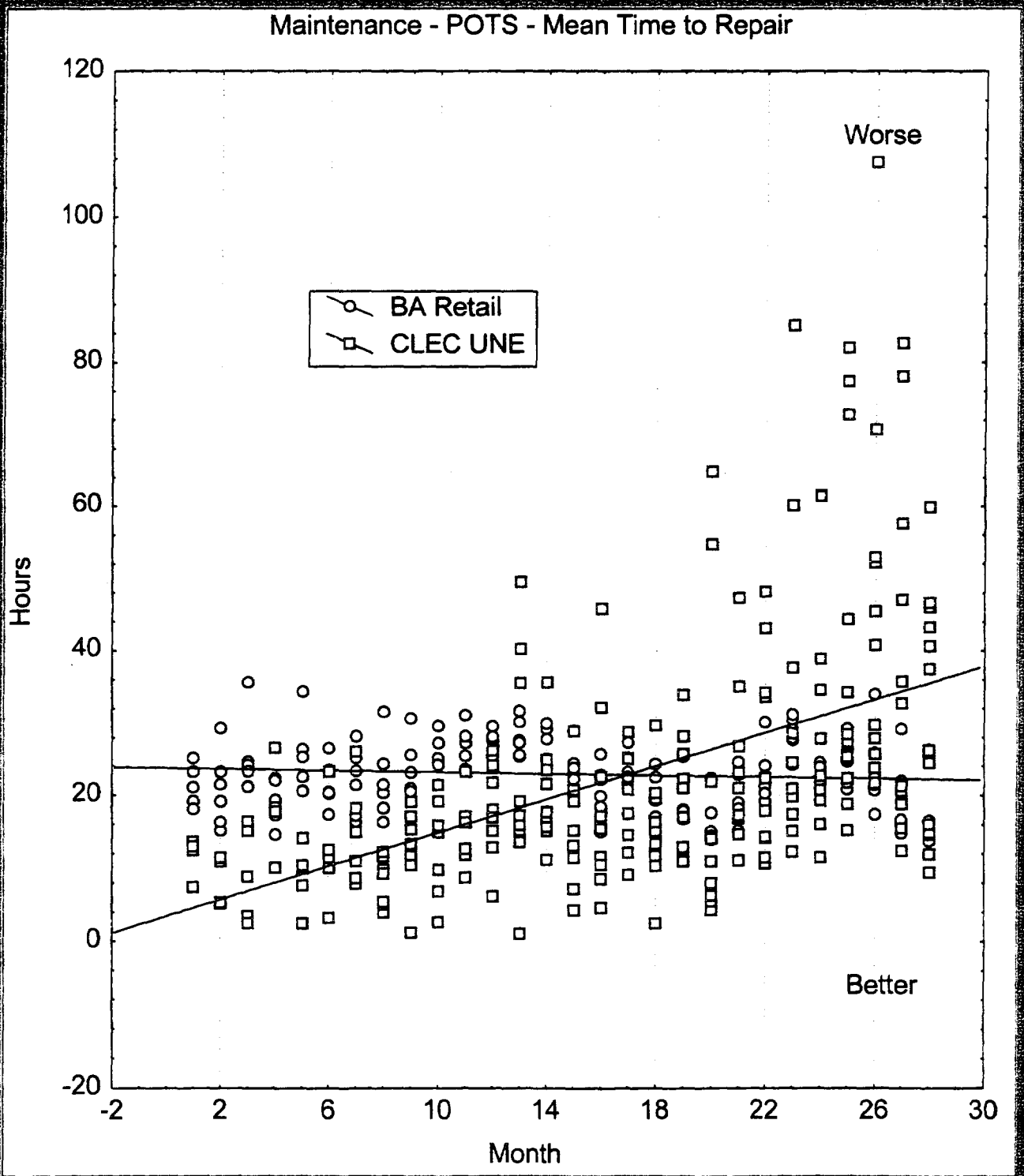

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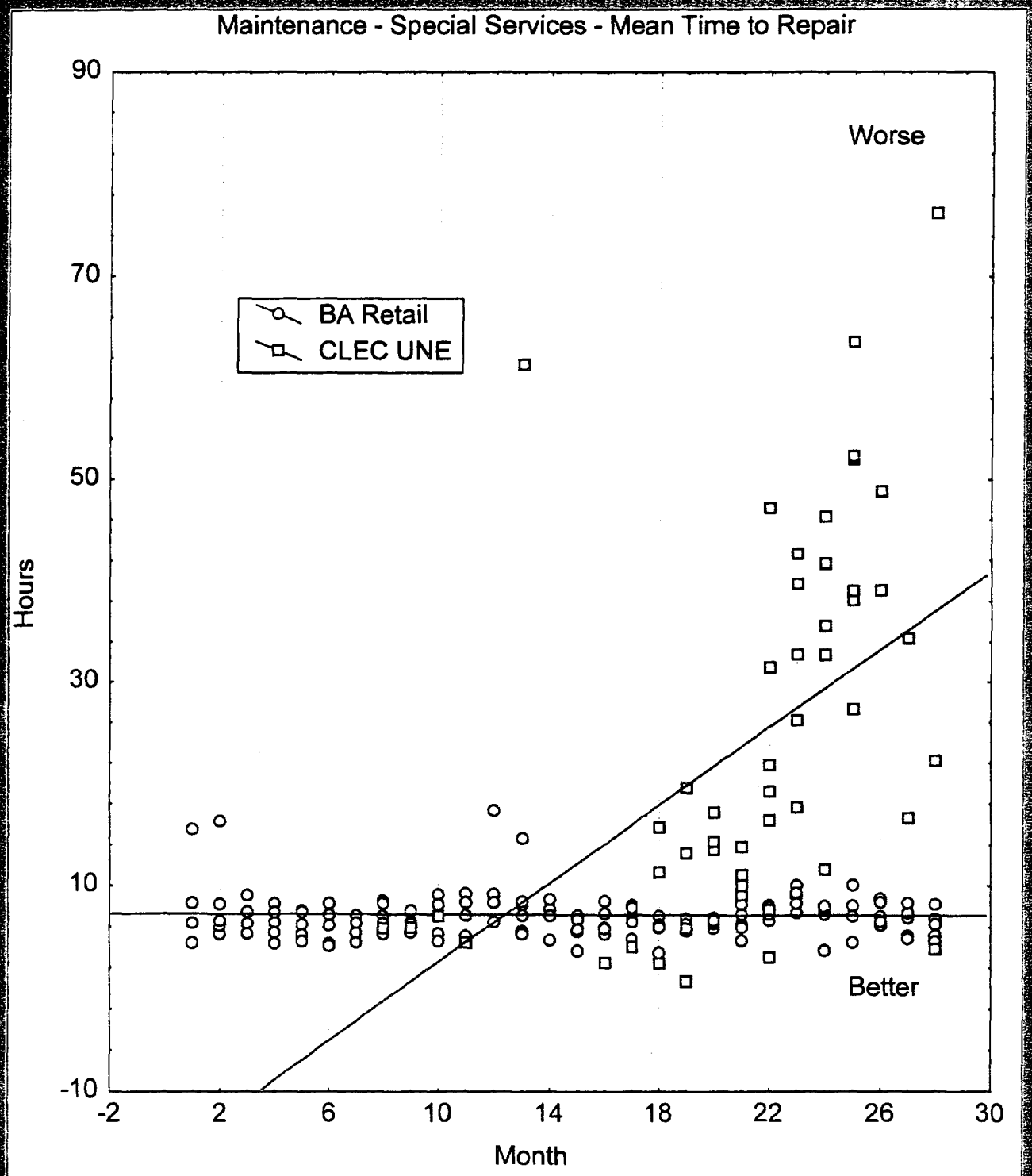

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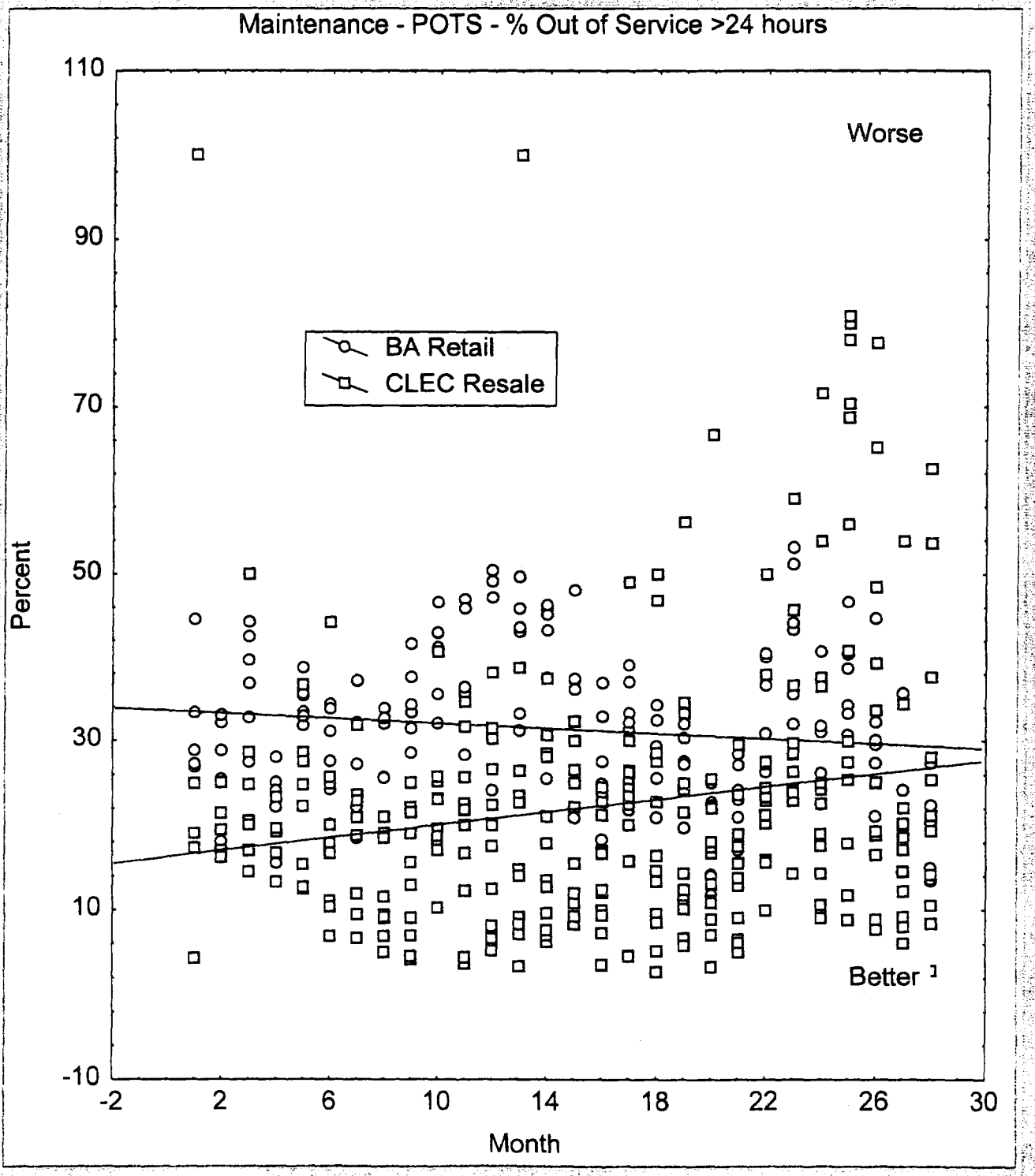

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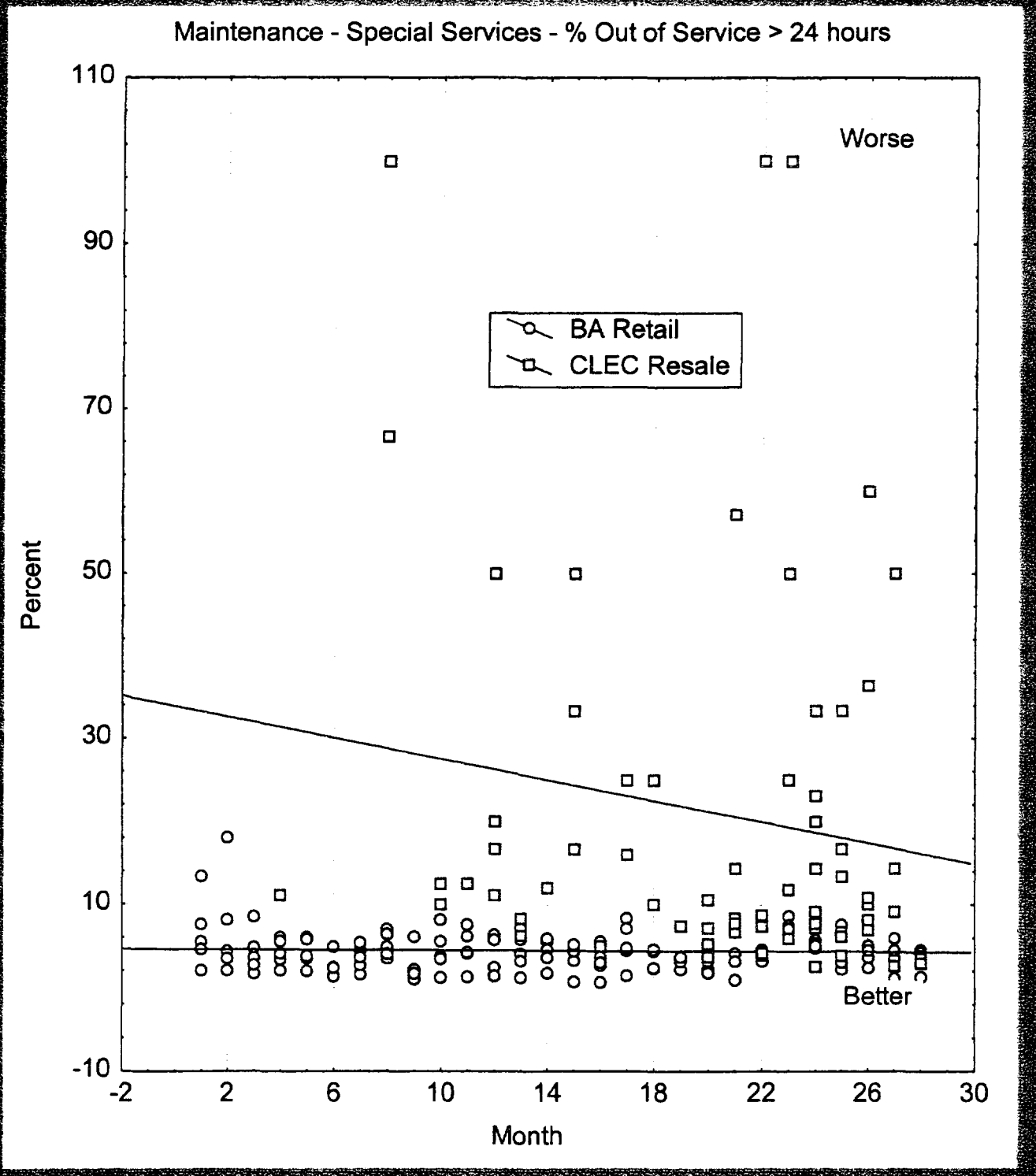

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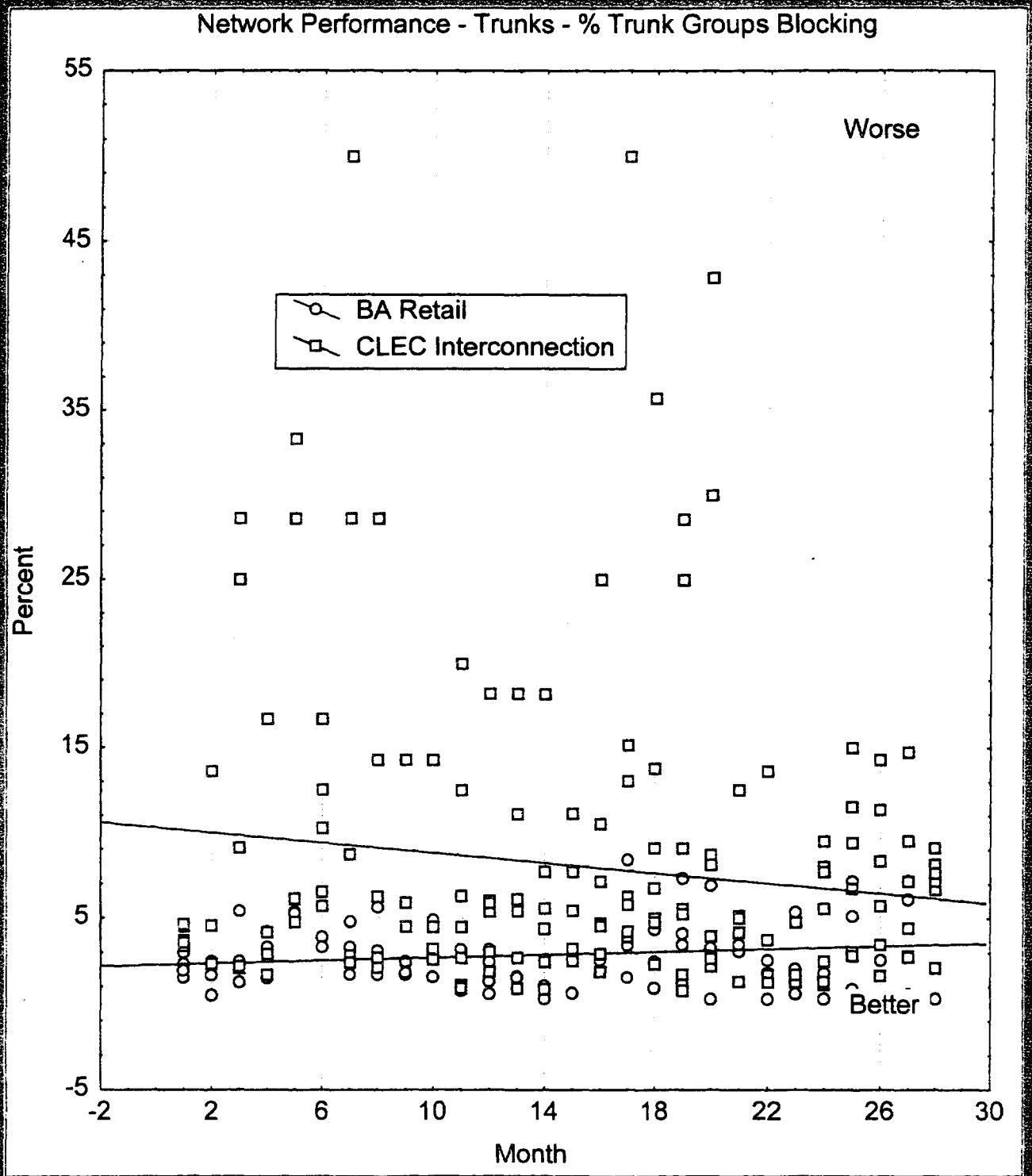

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